

THE HON'BLE SRI JUSTICE C.V. RAMULU

Tuesday, 11th day of July, 2006

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W.P.No.26456 of 2005

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Between:

B. Chandrasekhar & 8 others

... Petitioner

and

The Government of A.P., rep.by its
Principal Secretary, Agricultural &
Cooperation Department, Secretariat,
Hyderabad and 2 others

... Respondents

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THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.26456 of 2005

ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the 1st respondent in issuing G.O.Ms.No.176, Agriculture and Cooperation (Coop.V) Department, dated 14-6-2005 and the consequential Proceedings issued by the 3rd respondent in Rc.No.2238/05-C, dated 25-7-2005 as arbitrary and illegal, apart from contrary to the provisions of Andhra Pradesh Cooperative Societies Act,1964 (for short 'the Act') and the Judgment of a Full Bench of this Court in **NAGESWARA RAO v. GOVERNMENT OF A.P.**^[1] and to set aside the same.

Petitioners are '9' in number. According to them, they are the members of the then Waddepally Primary Agricultural Cooperative Society, which has now been merged with the 5th respondent-society. Waddepally PACS, which has now been merged with the 5th respondent-society, came into existence decades back and had been running smoothly and functioning effectively. The society was having total 12 villages within its area of operation and the total membership of the Society was 3011. The society was formed in the year 1959-60 and it had a turnover of more than Rs.1.50 crores. The society has been running for the benefit of its members. The recovery rate has been increased and as per the report of the Audit, the society is in viable condition. While so, the then Person-Incharge of Waddepally

PACS conducted a general body meeting by issuing a notice dated 27-6-2005 stating that the 3rd respondent issued a notification calling for objections on the merger of Waddepally PACS with the 5th respondent-society vide Proceedings dated 20-6-2005. However, the general body was not informed as to recording of resolution by the person-incharge. The person-incharge has recorded the resolution as if the general body approved for merger of the society and there were no objections from any member of Waddepally PACS and on the basis of the same, final proceedings were issued by the 3rd respondent vide impugned Proceeding dated 25-7-2005 merging Waddepally PACS with 5th respondent-society.

It is the case of the petitioners that the impugned action of merger of Waddepally PACS was undertaken by the 3rd respondent in pursuance of the impugned G.O.Ms.No.176, dated 14-6-2005. Under the said G.O., the 1st respondent has directed for merger of non-viable societies upon identification of the same by the 3rd respondent, with the focal point non-viable society. The impugned action of the 1st respondent in issuing the said G.O. is illegal and contrary to law. The G.O. runs contrary to the objects of the provisions of the Act. Firstly, Section 15-A of the Act was introduced by way of Amendment Act 6 of 1977. The Statement of Objects of the said amendment shows that the amendment was made with a laudable object of merging non-viable societies with viable societies and liquidation of non-viable societies is taken in the larger interests of cooperative societies and production of agricultural produce. Secondly, the issuance of the G.O. itself is bad in law. Thirdly, what are the contents of the G.O. and viability or non-viability of the society decided, is not known to the society. Therefore, the impugned Orders passed thereafter are liable to be set aside.

There is no necessity of going into all the details. Insofar as Section 15-A of the Act is concerned, a Full Bench of this Court in **NAGESWARA RAO**'s case (supra) upheld its constitutional validity. Then the question is whether the notice must contain the details as to the viability or non-viability of the society and whether it is to be merged or not. Since the said details are not published in the notice, it was very difficult for the petitioners to make effective representation. While considering this aspect, the Full Bench held that the impugned notice therein is liable to be quashed. However, it was left open to the respondents to issue fresh notice in the light of the observations made in the Judgment.

Learned counsel for the petitioners relying upon the said Full Bench Judgment stated that the preliminary notice, may be purported to be under G.O.Ms.No.176, dated 14-6-2005, issued, does not contain details of what the G.O. itself contemplates and why the society was declared as unviable and why it is sought to be merged with 5th respondent-society. Therefore, the principles of natural justice are violated and the impugned Orders are liable to be set aside.

Before going into the merits, it is necessary to notice that, in all, there were 3011 members in Waddepally PACS. Only these nine (9) petitioners have come forward by way of filing this Writ Petition, after the merger had effected. The resolution passed by the society shows that it was passed unanimously. This resolution is not challenged in this Writ Petition, though some reference is made as to the same. The very Agenda of the general body meeting held on 26-7-2005 was regarding consideration of the merger of Waddepally PACS with other focal non-viable society mentioned in the notice issued by the Collector. Unanimous resolution has been passed accepting such a merger of Waddepally PACS with the other focal non-viable society in

the Mandal. The petitioners have not filed any document authorizing them to file this Writ Petition on behalf of the Society. Unanimous resolution was passed by the Society expressing its willingness and to merge Waddepally PACS with 5th respondent-society. The final proceedings of merger of Waddepally PACS with the 5th respondent were issued on 25-7-2005. Therefore, the questions that no notice of any kind was issued and the contents of the G.O. and also as to the viability or non-viability of the society is not mentioned in the notice, cannot be gone into in a Writ Petition filed by just nine persons purported to be the members of the then Waddepally PACS, which merged with the 5th respondent-society.

For all the above reasons, the Writ Petition is devoid of merits and liable to be dismissed. Accordingly, the Writ Petition is dismissed. No order as to costs.

11-7-2006

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